

1 HONORABLE BARBARA J. ROTHSTEIN
2
3

4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 ***IN RE SUBPOENA TO JIMMY NGUYEN***

8 IRA KLEIMAN, as the personal representative
9 of the Estate of David Kleiman; and W&K Info
10 Defense Research, LLC,

11 Plaintiffs,

12 v.

13 CRAIG WRIGHT,

14 Defendant.

15 CASE NO. 20-cv-00593-BJR

16 **NON-PARTY JIMMY NGUYEN'S
17 RESPONSE TO PLAINTIFFS'
18 SECOND MOTION TO COMPEL**

19
20
21
22
23
24
25
NON-PARTY JIMMY NGUYEN'S RESPONSE
TO PLAINTIFFS' SECOND MOTION TO COMPEL
(USDC Case No. 20-cv-00593-BJR)

Page 1 of 12

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 The defendant in the underlying Florida lawsuit, Craig S. Wright, Ph.D., and his non-
 2 party employer nChain Limited, are not before this Court, but each of their vital interests are at
 3 stake. Plaintiffs are using the deposition of non-party witness Mr. Nguyen—nChain’s former
 4 CEO and Dr. Wright’s liaison in the Florida lawsuit—as a back-door attempt to obtain Dr.
 5 Wright and nChain’s own confidential, privileged litigation communications. At issue in the
 6 Florida lawsuit, according to Plaintiffs, are billions of dollars related to the alleged
 7 misappropriation of Bitcoin and related intellectual property. The case has been hotly contested
 8 for over two years and is set for trial in July 2020. Plaintiffs’ motion asks this Court to rule that
 9 Dr. Wright and nChain’s privileged, litigation-related communications with and through Mr.
 10 Nguyen have been waived.

11 As an initial matter, Mr. Nguyen has gone above and beyond his discovery obligations
 12 as a non-party witness. Plaintiffs neglect to inform the Court that Mr. Nguyen produced 1,692
 13 pages of documents in response to their subpoena and then sat for a *seven-hour* deposition. Mr.
 14 Nguyen answered each and every question posed to him, save only those few that were
 15 protected by black-letter privileges: attorney-client, work product, and common interest—all of
 16 which are documented in written agreements which can be produced to the Court *in camera*.

17 Plaintiffs’ tactic is to litigate Dr. Wright and nChain’s attorney-client privileges and
 18 work product protection in a satellite proceeding in which both are absent. And they seek to
 19 leverage this Court’s prior Order regarding *service* of Mr. Nguyen’s deposition subpoena in
 20 hopes of obtaining a ruling that legal privileges have been waived—as if the two concepts
 21 somehow are related. The gambit should be summarily rejected. Dr. Wright and nChain’s
 22 confidential, litigation-related communications with Mr. Nguyen are text book examples of
 23 privileged and work product communications. Plaintiffs should not be permitted to invade the
 24 legal privileges of absent parties through a legally flawed collateral attack.

FACTS

Plaintiffs has moved to compel Mr. Nguyen to comply with a subpoena *duces tecum* in connection with an action in the Southern District of Florida.¹ [Dkt. No. 1]. Mr. Nguyen opposed the motion on grounds that service of the subpoena was improper. [Dkt. No. 8]. On April 24, 2020, this Court granted Plaintiffs' motion and required Mr. Nguyen to produce the requested documents within five days and to sit for a video-deposition within seven days. [Dkt. No. 14]. Mr. Nguyen complied with both directives. Mr. Nguyen served his timely Response to Plaintiffs' Document Subpoena and produced 1,692 pages of responsive documents. [Ex. A]. The following day, Mr. Nguyen gave a seven-hour deposition.² The few questions Mr. Nguyen was instructed not to answer concerned privileged communications with Dr. Wright, the nChain Group of companies, and their respective counsel.

A. Dr. Wright and nChain

In December 2017, Mr. Nguyen became CEO of nChain,³ a leading blockchain technology companies. [Nguyen Decl. ¶ 3]. Dr. Wright is nChain Limited's Chief Scientist. [Id.]. Dr. Wright is a brilliant scientist but has difficulty communicating his ideas in a way that other people can understand. [Id. ¶ 4]. This problem occurs especially when Dr. Wright discusses Bitcoin and blockchain technology concepts to laypeople. [Id.]. As his work colleague, Mr. Nguyen came to understand how to decipher and convey Dr. Wright's communications. [Id. ¶ 5].

B. The Florida Lawsuit

Mr. Nguyen learned of the Florida lawsuit in February 2018. [Id. ¶ 6]. He understood, based on the complaint, that Plaintiffs claimed a share of Dr. Wright and David Kleiman's alleged jointly-mined Bitcoin and alleged related intellectual property. [Id. ¶¶ 6-7]. Regarding intellectual property, the complaint alleged that Dr. Wright filed hundreds of patents related to Bitcoin and

¹ See *Ira Kleiman, et al. v. Craig Wright*, Case No. 9:18-cv-80176-BB/BR.

² Filed contemporaneously herewith is Mr. Nguyen's motion to seal his confidential deposition transcript. Ex. B hereto.

³ The nChain Group includes nChain Limited, a U.K. company, and nChain Holdings Limited, an Antiguan company (collectively, “nChain”).

1 blockchain technology through nChain. [DE 1 ¶ 117]. Mr. Nguyen understood from the complaint
 2 that Mr. Kleiman's estate might at some point attempt to assert claims against nChain. [Nguyen
 3 Decl. ¶10]. Mr. Nguyen had little knowledge of Mr. Kleiman before the Florida lawsuit. [Id. ¶
 4 23]. Almost all his knowledge was gained through confidential communications during the
 5 litigation. [Id. ¶ 24].

6 **C. Mr. Nguyen's Role as Dr. Wright's Litigation Liaison**

7 Shortly after the Florida lawsuit was filed, Dr. Wright asked Mr. Nguyen to help him find
 8 counsel and to assist him with the litigation. [Id. ¶ 11]. Mr. Nguyen explained to Dr. Wright that
 9 he was no longer practiced law and could not act as his lawyer. [Id.]. Dr. Wright, nevertheless,
 10 requested that Mr. Nguyen serve as his liaison to facilitate communication with his counsel,
 11 especially with helping Dr. Wright explain Bitcoin and blockchain issues to his counsel and
 12 helping his counsel interpret Dr. Wright. [Id.]. Mr. Nguyen was the obvious choice to act in this
 13 role because he understood how to communicate with Dr. Wright, understood Bitcoin, and was a
 14 former U.S. lawyer. [Id.].

15 Mr. Nguyen played an integral role in selecting Dr. Wright's litigation team. [Id. ¶ 12].
 16 Since then, Mr. Nguyen has acted as liaison between Dr. Wright and his litigation team,
 17 interfaced between Dr. Wright and his counsel to explain topics that affected defense strategies,
 18 and communicated the lawyers' mental impressions to Dr. Wright, and vice-versa. [Id.]. Mr.
 19 Nguyen also liaised with Dr. Wright's litigation funder Calvin Ayre and Mr. Ayre's legal
 20 representative Ron Tarter. [Id. ¶ 13].

21 **D. Common Interest Agreements⁴**

22 Mr. Nguyen also selected and engaged a law firm to represent nChain in connection with
 23 the subject matter of the Florida Lawsuit. [Id. ¶ 15]. He also monitored the litigation on behalf
 24

25 ⁴ Mr. Nguyen will make the two written Common Interest Agreements available to the Court for an *in camera*
 26 review. *See Phase II Chin, LLC v. Forum Shops, LLC*, 2010 WL 11636216, at *9 (D. Nev. Mar. 2, 2010) (finding it
 27 "appropriate for the Court to review the agreement *in camera* to determine that such an agreement, in fact, exists and
 28 to also verify its effective date and the parties to the agreement")

1 nChain and engaged in related confidential communications with senior leaders of nChain and
 2 with nChain and Dr. Wright's respective legal counsel. [Id.].

3 In April 2018, a Common Interest Agreement was executed between Dr. Wright and
 4 nChain. [Id. ¶ 16]. The 2018 Agreement, which Mr. Nguyen signed on behalf of nChain, was
 5 made expressly with respect to the Florida lawsuit and any related litigation. [Id.]. Because the
 6 Florida lawsuit made allegations regarding certain of nChain's intellectual property, nChain and
 7 Dr. Wright, as nChain's Chief Scientist, shared a common interest in protecting nChain's patents
 8 and other intellectual property. [Id.]. The purpose of the Common Interest Agreement was to
 9 enable nChain and Dr. Wright and their lawyers to confer and share litigation-related information
 10 without waiving legal privileges and work product protections. [Id.].

11 In December 2018, Mr. Nguyen transitioned from nChain CEO to Chair of nChain's
 12 Strategic Advisory Board, a position he held until March 2020. [Id. ¶¶ 18-19]. As Chair of the
 13 Strategic Advisory Board, Mr. Nguyen's interacted with third-party companies on behalf of
 14 nChain related to ongoing business matters in which he had been involved in his former nChain
 15 positions; attended meetings with and advising nChain executives; and assisted with nChain's
 16 media and public relations activities. [Id. ¶ 18]. Mr. Nguyen also continued to monitor the Florida
 17 litigation on behalf of nChain and engaged in related confidential communications with its senior
 18 leaders, counsel, and with Dr. Wright's counsel. [Id.].

19 On March 16, 2020, Mr. Nguyen confirmed that Dr. Wright wanted him to continue in the
 20 liaison role for the Florida lawsuit even though Mr. Nguyen no longer held any position with
 21 nChain. [Id. ¶ 20]. Dr. Wright agreed and confirmed the continuing relationship in an email dated
 22 March 27, 2020. [Id.]. In April 2020, a second Common Interest Agreement was executed
 23 between Dr. Wright, Mr. Nguyen personally, and nChain Group Holdings Limited (the current
 24 holding company for the nChain Group of companies). [Id. ¶ 21]. Because Mr. Nguyen still
 25 serves as Dr. Wright's legal liaison, he shares a common interest with nChain and Dr. Wright in
 protecting their legal interests. [Id.].

ARGUMENT

Federal law governs the application and scope of the work product doctrine in federal cases, *McKenzie Law Firm, P.A. v. Ruby Receptionists, Inc.*, 333 F.R.D. 638 (D. Or. 2019), but not necessarily the attorney-client privilege. Per Federal Rule of Evidence 501, federal common law governs the attorney-client privilege in federal question cases; state law applies in diversity cases. *Wilcox v. Arpaio*, 753 F.3d 872 (9th Cir. 2014). Where, as in the Florida lawsuit, federal jurisdiction is based *both* on diversity of citizenship *and* federal question, is unclear whether the attorney-client privilege is governed by Florida state law or federal common law. *Compare Eagle Precision Tech., Inc. v. Eaton Leonard Robolix, Inc.*, 2005 WL 6453567, at *2-7 (S.D. Cal. May 12, 2005) (applying state privilege law), with *Natural-Immunogenics Corp. v. Newport Trial Group*, 2017 WL 10562762, at *3-4 (C.D. Cal. June 27, 2017) (applying federal privilege law). The issue is largely academic, however, because, as described below, federal common law is consistent with Florida law on attorney-client privilege and work product.

A. Mr. Nguyen's Litigation-Related Communications with nChain and Dr. Wright and their Respective Counsel are Work Product and Attorney-Client Privileged.

“Ordinarily, a party may not discover documents⁵ and tangible things that are prepared in anticipation of litigation or for trial by or for another party *or its representative* (including the other party’s attorney, *consultant*, surety, indemnitor, insurer, or *agent*). Fed. R. Civ. P. 26(b)(3) (emphasis added). “The work product doctrine provides a qualified immunity for materials prepared in anticipation of litigation by a party, an attorney, *or other representative of the party*.” *Youngevity Int’l, Inc. v. Smith*, 2017 WL 4227025, at *3 (S.D. Cal. Sept. 22, 2017) (emphasis added). Work product protection has been extended to former employees, *Carlin v. Dairy America*, 2017 WL 3896327, at *3 (E.D. Cal. September 6, 2017), consultants, *In re Grand Jury Subpoena (Mark Torf/Torf Env'l. Mgmt.)*, 357 F.3d 900 (9th Cir. 2004), and even public relations firms. *Anderson v. Seaworld Parks and Ent., Inc.*, 329 FRD 628, 636 (N.D. Cal. 2019).

⁵ No documents have been withheld because of work product, and Plaintiffs' do not quibble with Mr. Nguyen's document production.

1 Mr. Nguyen's role as nChain's CEO and Strategic Advisory Board Chair, and litigation
 2 liaison and representative for both nChain and Dr. Wright, easily qualifies his litigation-related
 3 communications with each and with their respective counsel as work product.

4 Mr. Nguyen's litigation-related communications also are attorney-client privileged. "The
 5 attorney-client privilege protects from discovery 'confidential communications between attorneys
 6 and clients, which are made for the purpose of giving legal advice.'" *Narog v. City of Redwood*
 7 *City*, C-13-03237 DMR, 2014 WL 1088297, at *3 (N.D. Cal. Mar. 17, 2014). In the corporate
 8 context—as with nChain—the attorney-client privilege is not limited to a "control group" of high-
 9 level corporate employees. *See Upjohn Co. v. United States*, 449 U.S. 383 (1981). Rather, the
 10 privilege extends to *anyone* who assists with the litigation and acts as the "functional equivalent"
 11 of an employee, including independent contractors, agents, consultants, former employees, and
 12 former board members. *See In re Bieter Co.*, 16 F. 3d 929, 937-38 (8th Cir. 1994); *United States*
 13 *v. Graf*, 610 F.3d 1148 (9th Cir. 2010) (adopting *Bieter*). "[W]here attorney-client privilege is
 14 concerned, hard cases should be resolved in favor of the privilege, not in favor of disclosure."
 15 *Guidiville Rancheria of California v. United States*, 2013 WL 6571945, at *3 (N.D. Cal. Dec. 13,
 16 2013).

17 The concept applies with equal force where the client is an individual like Dr. Wright.
 18 Under the so-called *Kovel* doctrine, *anyone* may qualify as a "privileged agent" if utilized to
 19 improve the attorney's comprehension of information or the client's comprehension of legal
 20 advice. *United States v. Kovel*, 296 F.2d 918, 922 (2d Cir. 1961) (accounting expert serving as
 21 intermediary); *Iscaro v. Flavor Delite, Inc.*, 2015 WL 12780954, at *1 (S.D. Fla. June 26, 2015)
 22 (intermediary was plaintiff's sister-in-law on whom she relied for her "business savvy to help her
 23 evaluate and/or comprehend information coming from the attorneys"); *Segerstrom v. United*
 24 *States*, 2001 WL 283805, at *3 (N.D. Cal. Feb. 6, 2001) (financial advisor serving as
 25 intermediary).

1 The idea that legal privileges attach to Mr. Nguyen's litigation-related communications is
 2 not a close question. Mr. Nguyen's positions as nChain CEO and Chair of its Strategic Advisory
 3 Board⁶ and his role in hiring legal counsel in the Florida lawsuit for both nChain and Dr. Wright,
 4 monitoring the case on their behalves, and liaising with their respective counsel, easily satisfies
 5 the criteria for extending attorney-client and work product protections to his litigation-related
 6 communications. Mr. Nguyen "possesses the very sort of information that the privilege envisions
 7 flowing most freely" and is "precisely the sort of person with whom a lawyer would wish to
 8 confer confidentially." *Graf*, 610 F.3d at 1158 (9th Cir. 2010).⁷

9 Plaintiffs incorrectly claim that Mr. Nguyen's confidential communications with Dr.
 10 Wright's litigation funder Calvin Ayre or his legal representative are not protected.⁸ *In re Int'l Oil*
 11 *Trading Co., LLC*, 548 B.R. 825 (Bankr. S.D. Fla. 2016), held that both the attorney-client and
 12 work product doctrine extend to communications with a litigation funder. The court observed that
 13 "[F]ederal courts applying Florida law lean toward the more expansive 'common enterprise'
 14 approach to the "common interest" exception. In fact, the official comment following Fla. Stat. §
 15 90.502⁹ provides specific examples of parties to whom disclosure may be allowed including,
 16 without limitation, 'business associates.'" *Id.* at 833 (emphasis added). The court concluded:

17 [The] case law applying the broader approach to the 'agency exception' is more
 18 consistent with the purpose for the exception and thus better reasoned. The broader
 approach to the "agency exception" is also in agreement with Florida law. Florida

19 ⁶ See *Digital Vending Serv. Int'l, Inc. v. Univ. of Phoenix, Inc.*, 2013 WL 1560212 (E.D. Va. April 12, 2013)
 20 (attorney-client privilege applied to former board member who liaised with the company's litigation team); *In re*
 21 *High-Tech Employee Antitrust Litigation*, 2013 WL 772668, at *3 (N.D. Cal. Feb. 28, 2013) (privilege applied to an
 22 "executive whisperer," who served "[e]ither as consultant or part-time employee" advising "Google's seniormost
 23 management").

24 ⁷ Plaintiffs misplace reliance on *In re N. Plaza, LLC*, (Bankr. S.D. Cal. May 30, 2008), which involved
 25 communications among an individual with whom the client only had a "personal relationship."

26 ⁸ Plaintiffs' position is incorrect and hypocritical, as they also have a litigation funder and would not be keen to
 27 share their own communications.

28 ⁹ Plaintiffs' misplace reliance on *Gerheiser v. Stephens*, 712 So. 2d 1252 (Fla. 4th DCA 1998), and *Witte v. Witte*,
 29 126 So. 3d 1076 (Fla. 4th DCA 2012). Both cases addressed whether third parties were necessary for the
 30 transmission of privileged communications under Florida Statute section 90.502(1)(c)(2). Here, Mr. Nguyen's
 31 liaison role falls under section 90.502(1)(c)(1), which concerns communications in "furtherance of the rendition of
 32 legal services."

1 Statutes § 90.502(c)(2) [sic: (c)(1)] protects communications with those ‘to whom
 2 disclosure is in furtherance of the rendition of legal services to the client.’ This
 3 protection is in addition to the protection of communications with those
 4 ‘reasonably necessary for the transmission of the communication,’ a provision that
 5 protects communications shared with secretarial staff and *other intermediaries*.
 6 Read together it appears these provisions are intended to protect communications
 7 with *any party* who assists the client in obtaining legal services. *Litigation funders*
 8 *fall in this category. One would need to assign a hackneyed construction to the*
 9 *statute to reach another conclusion.*

10 *Id.* at 834 (emphasis added).

11 In short, the concept that attorney-client privilege and work product protections extend to
 12 “any party who assists the client in obtaining legal services” applies equally to Dr. Wright’s
 13 litigation funder Mr. Ayre as it does to Mr. Nguyen. Mr. Nguyen assisted Dr. Wright in searching
 14 for, selecting, and liaising with his defense team for the Florida lawsuit. Mr. Nguyen was and is a
 15 critical member of the litigation team, and Dr. Wright did not waive his attorney-client privilege
 16 by sharing litigation-related confidences with him. Only Plaintiffs’ “hackneyed construction”
 17 could lead to a different conclusion.

18 **B. Mr. Nguyen’s Litigation-Related Communications with nChain and Dr. Wright and their
 19 Respective Counsel Also are Protected by Two Joint Defense Agreements.**

20 “The ‘common interest’ or ‘joint defense’ doctrine is an exception to the general rule that
 21 disclosure of protected material to third parties constitutes a waiver.” *Youngevity Int’l, Inc.*, 2017
 22 WL 4227025, at *3. It allows parties “to disclose privileged information to each other without
 23 destroying the privileged nature of those communications.” *Lectrolarm Custom Sys., Inc. v. Pelco*
 24 *Sales, Inc.*, 212 F.R.D. 567, 572 (E.D. Cal. 2002). The common interest privilege applies where
 25 “(1) the communication is made by separate parties in the course of a matter of common interest;
 (2) the communication is designed to further that effort; and (3) the privilege has not been
 waived.” *United States v. Bergonzi*, 216 F.R.D. 487, 495 (N.D. Cal. 2003).

26 Contrary to Plaintiffs’ contention, the common interest privilege protects both attorney-
 27 client privileged communications and work product. *Griffith v. Davis*, 161 F.R.D. 687, 692 (C.D.
 28 Cal. 1995) (“The common defense doctrine, often referred to as the ‘joint defense privilege,’

1 basically expands application of the attorney-client privilege *or the work-product doctrine* to
 2 circumstances in which it otherwise might not apply.”). (Citation omitted; emphasis added).

3 Joint defense agreements may be written or unwritten, express or implied. *United States v.*
 4 *Gonzalez*, 669 F.3d 974, 979 (9th Cir. 2012). Here, the Common Interest Agreements¹⁰ are in
 5 writing and between parties who share obvious common legal interests: Dr. Wright is the
 6 defendant in the Florida lawsuit; nChain Limited is Dr. Wright’s employer and allegedly
 7 possesses intellectual property which Plaintiffs claim to target; and Mr. Nguyen is nChain’s
 8 former CEO and Dr. Wright’s legal liaison in the Florida lawsuit. It would be difficult to imagine
 9 a situation in which the legal interests of the parties are more interwoven and consistent. In any
 10 event, “parties to an asserted JDA need not have identical interests and may even have some
 11 adverse motives.” *United States v. Gonzalez*, 669 F.3d 974, 980 (9th Cir. 2012). “The protection
 12 of the privilege under the community of interest rationale … is applicable whenever parties with
 13 common interests join forces for the purpose of obtaining more effective legal assistance.”
 14 *Youngevity Int’l, Inc.*, 2017 WL 4227025, at *4.

15 Plaintiffs attempt to distinguish the Common Interest Agreements here because Mr.
 16 Nguyen will not be “personally affected by the outcome” of the Florida litigation. [Dkt. No. 15, at
 17 6]. That, of course, misses the point. Dr. Wright’s interests are at stake in the litigation, and Mr.
 18 Nguyen, as Dr. Wright’s liaison in the litigation, shares a common interest in protecting those
 19 interests. The Common Interest Agreements clearly protect attorney-client and work product
 20 communications between Dr. Wright, his employer nChain, and his litigation liaison Mr. Nguyen.

21 CONCLUSION

22 For the foregoing reasons, Plaintiffs’ Second Motion to Compel should be denied.

23
 24
 25¹⁰ Plaintiffs’ reliance on *Regions Bank v. Chicago Title Ins. Co.*, 2011 WL 13225147 (S.D. Fla. Nov. 7, 2011), is
 misplaced. The case involved a general “confidentiality agreement” completely unrelated to pending or threatened
 litigation, not a litigation-related *joint defense agreement*, as here.

1
2 DATED this 6th day of May, 2020.
3

4 */s/ Scott B. Henrie*
5 Scott B. Henrie, WSBA #12673
6 WILLIAMS, KASTNER & GIBBS PLLC
7 601 Union Street, Suite 4100
8 Seattle, WA 98101-2380
9 Telephone: (206) 628-6600
10 E-mail: shenrie@williamskastner.com

11 and
12

13 */s/ Spencer H. Silverglate*
14 Spencer H. Silverglate, FL Bar No. 769223
15 *Pro Hac Vice Application Pending*
16 Trevor Gillum, FL Bar No. 1003867
17 *Pro Hac Vice Application Pending*
18 CLARKE SILVERGLATE, P.A.
19 799 Brickell Plaza, Suite 900
20 Miami, FL 33131-2805
21 Telephone: (305) 377-0700
22 Email: ssilverglate@cspalaw.com; and
23 tgillum@cspalaw.com

24 *Attorneys for James “Jimmy” D. Nguyen,*
25 *Subpoenaed Individual*

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 6, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those registered with CM/ECF.

Further, I hereby certify that on May 6, 2020, I provided the foregoing to following non-CM/ECF participants via Electronic Mail/Email:

Counsel for Plaintiffs:

Emanuel Jacobowitz, WSBA #39991
CLOUTIER ARNOLD JACOBOWITZ, PLLC
2701 1st Ave., Ste. #200
Seattle, WA 98121
Telephone: 206-769-3759
Email: manny@CAJlawyers.com

Velvel (Devin) Freedman, FL Bar No. 99762
ROCHE CYRULNIK FREEDMAN LLP
200 S. Biscayne Blvd, Suite 5500
Miami, FL 33131
Telephone: (305) 357-3861
Email: vel@rcflp.com; and
nbermond@rcflp.com

Kyle W. Roche and Joseph M. Delich
ROCHE CYRULNIK FREEDMAN LLP
99 Park Avenue, Suite 1910
New York, NY 10016
Email: kyle@rcflp.com; and
jdelich@rcflp.com

Andrew S. Brenner
BOIES SCHILLER FLEXNER LLP
100 SE 2nd Street, Suite 2800
Miami, FL 33131
Email: abrenner@bsflp.com

Counsel for Defendant:

Amanda McGovern
Email: amcgovern@riveromestre.com

DATED this 6th day of May, 2020.

/s/ Scott B. Henrie
Scott B. Henrie, WSBA #12673
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: (206) 628-6600 Fax: (206) 628-6611
Email: shenrie@williamskastner.com

***Attorneys for James "Jimmy" D. Nguyen,
Subpoenaed Individual***

Exhibit A

1 HONORABLE BARBARA J. ROTHSTEIN
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ***IN RE SUBPOENA TO JIMMY NGUYEN***

11 **IRA KLEIMAN**, as the personal
12 representative of the Estate of David
13 Kleiman; and W&K Info Defense
14 Research, LLC,

15 Plaintiffs,

16 v.

17 CRAIG WRIGHT,

18 Defendant.

19 CASE NO. 20-cv-00593-BJR

20 **NON-PARTY JIMMY NGUYEN'S
21 RESPONSE TO PLAINTIFFS'
22 DOCUMENT SUBPOENA**

23 **NON-PARTY JIMMY NGUYEN'S
24 RESPONSE TO PLAINTIFFS'
25 DOCUMENT SUBPOENA**
(USDC Case No. 20-cv-00593-BJR)

7083024.2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 Non-party Jimmy Nguyen (“Mr. Nguyen”), pursuant to Federal Rule of Civil Procedure
 2 45 and District Court Judge Barbara J. Rothstein’s Order Granting Plaintiffs’ Motion to
 3 Compel Compliance with Subpoena entered on April 24, 2020 [Dkt. No. 14], hereby serves his
 4 Response to Plaintiffs’ document subpoena.

5 **GENERAL OBJECTIONS**

6 1. Mr. Nguyen objects to each and every Request to the extent it seeks information
 7 protected by the attorney-client privilege, the work product doctrine, joint defense or joint
 8 interest privilege, or by any other applicable privilege, doctrine, law, or rule protecting the
 9 disclosure of documents or information. A Privilege Log is being produced contemporaneously
 herewith. Mr. Nguyen reserves the right to “claw back” any produced documents or information
 that contain privileged or protected material.

10 2. Mr. Nguyen objects to each and every Request on the grounds that it is overly
 11 broad in temporal scope, unduly burdensome, and vague.

12 3. Mr. Nguyen objects to each and every Request to the extent that it purports to
 13 impose obligations upon Mr. Nguyen beyond those imposed by the Federal Rules of Civil
 14 Procedure.

15 4. The foregoing General Objections are explicitly made a part of and incorporated
 16 by reference in each Response set forth below whether or not expressly referred to in that
 17 Response. All responses set forth below are made subject to and without waiving the
 18 foregoing objections and/or limitations and any additional objections and/or limitations set
 forth in response to any individual request. In addition, Mr. Nguyen reserves the right to seek
 reimbursement for his attorneys’ fees and costs pursuant to Fed. R. Civ. P. 45 in connection
 with his document production and deposition.

19 **RESPONSES**

20 **REQUEST 1.** All communications with Craig Wright concerning any of: David Kleiman,
 21 W&K Info Defense Research, LLC, Ira Kleiman, Satoshi Nakamoto, any Tulip Trust, Denis
 22 Mayaka, a bonded courier, Abacus Offshore, Equator Consultants, the Australian Tax Office,
 23 Stefan Matthews, Robert MacGregor, Calvin Ayre, Uyen Nguyen, or Craig Wright Companies.

24 Response: Documents containing the following production numbers are produced in Response
 25 to this Request. All such documents are hereby designated “Confidential” pursuant to the
 Stipulated Confidentiality Order entered in the underlying action on February 22, 2019 [DE
 105]. No responsive documents are being withheld based on the above stated General
 Objections other than those described in the Privilege Log served contemporaneously herewith.

**NON-PARTY JIMMY NGUYEN’S
 RESPONSE TO PLAINTIFFS’
 DOCUMENT SUBPOENA**

(USDC Case No. 20-cv-00593-BJR)

7083024.2

Williams, Kastner & Gibbs PLLC
 601 Union Street, Suite 4100
 Seattle, Washington 98101-2380
 (206) 628-6600

1 [000059], [000129-000147], [000151], [000153], [000305], [000306-000421], [000661-
 000662], [000673-000697], [000699-000701], [000705-000706], [000710-000711].

2 **REQUEST 2.** All communications with Calvin Ayre concerning any of: Craig Wright, David
 3 Kleiman, W&K Info Defense Research, LLC, Ira Kleiman, Satoshi Nakamoto, any Tulip Trust,
 4 Denis Mayaka, a bonded courier, Abacus Offshore, Equator Consultants, the Australian Tax
 Office, Stefan Matthews, Robert MacGregor, Uyen Nguyen, or Craig Wright Companies.

5 Response: Documents containing the following production numbers are produced in Response
 6 to this Request. All such documents are hereby designated “Confidential” pursuant to the
 7 Stipulated Confidentiality Order entered in the underlying action on February 22, 2019 [DE
 105]. No responsive documents are being withheld based on the above stated General
 Objections other than those described in the Privilege Log served contemporaneously herewith.

8 [000001, [00097], [000230-00233], [000306-000421], [000463-000464], [000666-000668],
 [000698], [000713].

9 **REQUEST 3.** All communications with Stefan Matthews concerning any of: Craig Wright,
 10 David Kleiman, W&K Info Defense Research, LLC, Ira Kleiman, Satoshi Nakamoto, any
 11 Tulip Trust, Denis Mayaka, a bonded courier, Abacus Offshore, Equator Consultants, the
 Australian Tax Office, Calvin Ayre, Robert MacGregor, Uyen Nguyen, or Craig Wright
 Companies.

12 Response: Documents containing the following production numbers are produced in Response
 13 to this Request. All such documents are hereby designated “Confidential” pursuant to the
 14 Stipulated Confidentiality Order entered in the underlying action on February 22, 2019 [DE
 105]. No responsive documents are being withheld based on the above stated General
 Objections other than those described in the Privilege Log served contemporaneously herewith.

15 [000001-000008], [000009-000128], [000148-000152], [000154-000221], [000230-000464],
 16 [000503-000627], [000628-000647], [000655-000697], [000698-000707], [000709-000893],
 [00964-001311], [001315-001692].

17 **REQUEST 4.** All communications with Robert MacGregor concerning any of: Craig Wright,
 18 David Kleiman, W&K Info Defense Research, LLC, Ira Kleiman, Satoshi Nakamoto, any
 19 Tulip Trust, Denis Mayaka, a bonded courier, Abacus Offshore, Equator Consultants, the
 Australian Tax Office, Calvin Ayre, Stefan Matthews, Uyen Nguyen, or Craig Wright
 Companies.

20 Response: Documents containing the following production numbers are produced in Response
 21 to this Request. All such documents are hereby designated “Confidential” pursuant to the
 22 Stipulated Confidentiality Order entered in the underlying action on February 22, 2019 [DE
 105]. No responsive documents are being withheld based on the above stated General
 Objections other than those described in the Privilege Log served contemporaneously herewith.

23 [000001], [000025-000044], [00097], [000222-000233], [000423-000431], [00433-000446],
 [000464-000502], [000628-000637], [000648-000654], [000663-000665], [000667-000670],
 [000698], [000707-000708], [000713-00963], [00968-001095], [001141-001157].

24 **NON-PARTY JIMMY NGUYEN'S**
RESPONSE TO PLAINTIFFS'
DOCUMENT SUBPOENA

25 (USDC Case No. 20-cv-00593-BJR)

7083024.2

Williams, Kastner & Gibbs PLLC
 601 Union Street, Suite 4100
 Seattle, Washington 98101-2380
 (206) 628-6600

1 **REQUEST 5.** All communications with Andrew O'Hagan concerning any of: Craig Wright,
2 David Kleiman, W&K Info Defense Research, LLC, Ira Kleiman, Satoshi Nakamoto, any
3 Tulip Trust, Denis Mayaka, a bonded courier, Abacus Offshore, Equator Consultants, the
4 Australian Tax Office, Calvin Ayre, Stefan Matthews, Robert MacGregor, Uyen Nguyen, or
5 Craig Wright Companies.

6 Response: NONE
7
8
9

10 DATED this 29 day of April, 2020.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

/s/
10 Scott B. Henrie, WSBA #12673
11 WILLIAMS, KASTNER & GIBBS PLLC
12 601 Union Street, Suite 4100
13 Seattle, WA 98101-2380
14 Telephone: (206) 628-6600
15 E-mail: shenrie@williamskastner.com
16
17 and
18

/s/
10 Spencer H. Silverglate, FL Bar No. 769223
11 *Pro Hac Vice Application Pending*
12 Trevor Gillum, FL Bar No. 1003867
13 *Pro Hac Vice Application Pending*
14 CLARKE SILVERGLATE, P.A.
15 799 Brickell Plaza, Suite 900
16 Miami, FL 33131-2805
17 Telephone: (305) 377-0700
18 Email: ssilverglate@cspalaw.com; and
19 TGillum@cspalaw.com
20
21
22
23
24
25

*Attorneys for James "Jimmy" Nguyen,
Subpoenaed Individual*

NON-PARTY JIMMY NGUYEN'S
RESPONSE TO PLAINTIFFS'
DOCUMENT SUBPOENA

(USDC Case No. 20-cv-00593-BJR)

7083024.2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those registered with CM/ECF.

Further, I hereby certify that on April 29, 2020, I provided the foregoing to following non-CM/ECF participants via Electronic Mail/Email:

Counsel for Plaintiffs:

8 Emanuel Jacobowitz, WSBA #39991 9 CLOUTIER ARNOLD JACOBOWITZ, PLLC 10 2701 1st Ave., Ste. #200 11 Seattle, WA 98121 12 Telephone: 206-769-3759 13 Email: manny@CAJlawyers.com	14 Velvel (Devin) Freedman, FL Bar No. 99762 15 ROCHE CYRULNIK FREEDMAN LLP 16 200 S. Biscayne Blvd, Suite 5500 17 Miami, FL 33131 18 Telephone: (305) 357-3861 19 Email: vel@rcflp.com ; and 20 nbermond@rcflp.com
21 Kyle W. Roche and Joseph M. Delich 22 ROCHE CYRULNIK FREEDMAN LLP 23 99 Park Avenue, Suite 1910 24 New York, NY 10016 25 Email: kyle@rcflp.com ; and jdelich@rcflp.com	26 Andrew S. Brenner 27 BOIES SCHILLER FLEXNER LLP 28 100 SE 2nd Street, Suite 2800 29 Miami, FL 33131 30 Email: abrenner@bsflp.com

Counsel for Defendant:

Amanda McGovern
Email: amcgovern@riveromestre.com

DATED this 29 day of April, 2020.

/s/
20 Scott B. Henrie, WSBA #12673
21 WILLIAMS, KASTNER & GIBBS PLLC
22 601 Union Street, Suite 4100
23 Seattle, WA 98101-2380
24 Telephone: (206) 628-6600 Fax: (206) 628-6611
25 Email: shenrie@williamskastner.com

***Attorneys for James "Jimmy" Nguyen,
Subpoenaed Individual***

**NON-PARTY JIMMY NGUYEN'S
RESPONSE TO PLAINTIFFS'
DOCUMENT SUBPOENA**
(USDC Case No. 20-cv-00593-BJR)

7083024.2

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

EXHIBIT B

(FILED UNDER SEAL)